Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 87-884

IN THE

Supreme Court of the United States

OCTOBER TERM 1987

LOUELLA F. BENSON,
Petitioner,

v.

GLENN A. ALLY, PhD
E.J. Faul
FAUL ENERGY COMPANY
NELLIE C. FAUL
AMIE MELODY FAUL
GRACE IZENA KIDDER
MELVIN KIDDER
LOIS F. BEARB, INDIVIDUALLY
LOIS F. BEARB, AS
EXECUTRIX OF THE ESTATE OF FOREST BEARB
MALCOLM BEARB
LESLIE FAUL
WILLIAM C. GIBSON
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF

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TO: The Honorable Chief Justice of the United States and The Honorable Associate Justices of the Supreme Court of the United States

Petitioner files this Supplemental Brief in order to call the attention of the Court to pertinent events which have

transpired since she filed her Petition for a Writ of Certiorari in this case on November 30, 1987.

1. In spite of the fact that petitioner was denied all discovery and there were no hearings in subject cases (87-884), Judge Walters has never seen nor spoken to her, the troopers in the case against the State of Louisiana, (which was filed in 1985), have submitted the Fifth Circuit's decision in the Ally case, and are using past abuses, secret processes and denials of due process of subject cases and the cases which they derived from. On Dec. 10, 1987, counsel for the troopers in Civil Action No. 85-1239-LC, wrote the Court in support of their motion for Petitioner's mental evaluation three years after their trumped up charges were dismissed: "Defendants attach a copy of the unpublished opinion rendered by the United States Court of Appeal, Fifth Circuit, on August 27, 1987, in Benson v. Ally, Nos. 86-4797 and 86-4798 on its summary calendar, to which reference is made in their original Memorandum." (When petitioner and her husband reported on Sept. 19, 1984 for the trial, the false charge were suddenly dismissed outright after petitioner had been arrested by trooper who said she was going too slow and that he was looking for drugs and weapons. After an outright search and seizure and false arrest etc., troopers admitted she had no weapons, no drugs and was not drinking, put her speed on citation given to her hours later as 29 mph and later said under oath that she was going 40-45 mph in a 50 mph *maximum* zone. Petitioner is 53 with an excellent driving record which trooper-*nurse* admitted.

This means that the defendants in the Ally case do not even have to answer one interrogatory, not even those not protected by Court order, but their abuses and denials of due process can be used against her, and petitioner is ex-

posed to on-going harm by Dr. Ally's long-distance label which is being published and circulated to others inspite of the fact that he has never seen this pro se petitioner who lives in Virginia, and he had no right whatsoever to be a part of the Court ordered phone settlement conference between opposing counsel and plaintiff-petitioner in cases which subject cases derived from. The mental stigma discredits anyone and far more a pro se person. Should the Court allow such information before the Jury as the defense is trying to do, the harm will be compounded and all without any due process or discovery in subject cases, and more efforts to deny due process in related cases.

The Supreme Court should be informed that the Federal Court in Lake Charles in the case against the troopers, after having had opportunities to see and hear petitioner also saw fit to deny the troopers' Motion for petitioner's mental evaluation, as the Court in Opelousas and Lafayette also denied the defendants' frivolous motions filed by the defendants and counsel in CV84-2540 and CV84-2541 and their allies with self interest who are also defendants in subject cases. The troopers (the State of La.), had informed the Court that "plaintiff's mental condition is both in controversy and that good cause has been shown for the ordering of a mental examination" and had without concern for this petitioner's reputation given her name to a forensic doctor in Louisiana in their desperate efforts for a defense. As shown at page 1a, on Dec. 22, 1987, the Court denied the State's Motion for petitioner's mental evaluation after petitioner was granted an opportunity to respond and be heard and after the Court granted her motion for production of documentations, and she was granted discovery denied to her by the State for three years. In his ruling of Dec. 22, 1987, in CV85-1239 the Court said:

"It is well established that the Federal Rules of Civil Procedure should be liberally construed, but they should not be expanded by disregarding plainly expressed limitations. *Schlagenhauf v. Holder,* 379 U.S. 104, 85 S. Ct. 234,13 L. Ed. 2d 152 (1964). The Supreme Court has expressly determined that the "good cause" and "in controversy" requirements of Rule 35 make it very apparent that sweeping examinations of a party who has not affirmatively put into issue (her) own mental condition are not to be automatically ordered merely because the person has made a claim of emotional distress. *Schlagenhauf, supra; Cody v. Marriott Corp.,* 103 F.R.D. 421 (D. Mass. 1984)."

"The plaintiff has expressly asserted that she has not placed her mental condition at issue (plaintiff's answers to interrogatories No. 3, 14). Although the plaintiff has asserted damages for humiliation and embarrassment, it has been expressly held that a plaintiff does not place her mental condition in controversy merely by asserting a claim of damages for emotional distress. *Cody, supra.* Since no psychiatric injuries are alleged, this case should not be viewed as an instance where the mental state of a party has been affirmatively placed in controversy. *Cody, supra.*" See also 39a, 43a of Appendix.

The same is true in subject cases as shown at pages 180a and 181a of Appendix where petitioner expressly pleaded:

"this plaintiff did not and is not placing her health in controversy but is only seeking the protection of any American citizen, along with the same considerations anyone has the right to expect, without being forced into psychiatry."

Petitioner also pleaded as shown at Appendix 174a in subject cases:

> "The "long-distance label" is defaming, discrediting, has caused plaintiff to suffer general damages of humiliation, embarrassment, harassment and related damages and other damages to be specified upon trial of this action." (The Court has already admitted that the evidence shows damages to her reputation- A-47.)

Petitioner did not place her health in controversy in subject cases and she even specified that she was not doing so and she is seeking damages for humiliation and embarrassment and for discrediting her "to deny her due process and to try to justify their actions and scheme to take unfair advantage of plaintiff in business dealings concerning estate property . . ." see pg. 175a of appendix. Page 180a ". . . the stigma of mental illness is being used to discredit this plaintiff." Petitioner informed that the subject cases can be proved by what transpired in the cases which they derived from, E.J. Faul et al vs. L.F. Benson 1983, 89-191-B, Benson vs. Dep. Bearb et al CV84-2540 1984, and Benson vs. Lois F. Bearb and Leslie Faul CV84-2541 1984. This can indeed be done; petitioner has simply not been given that opportunity. The record and complete denial of due process in 87-884 and what transpired at trial in CV84-2541 also verifies this, as does Summary Judgment without hearing or trial in CV84-2540, and secret misrepresentations prior to rulings in all cases.

2. In a hearing on exceptions in 27th Judicial State Court on 21th day of December 1987, after the Fifth Circuit allowed petitioner to take CV84-2540 – Benson vs. Deputy Bearb and the Sheriffs, to State Court, counsel for

the sheriffs of Acadia Parish informed the State Judge that petitioner was before the Supreme Court in that case also. This is not so-because petitioner did not present the pertinent issues of CV84-2540 and CV84-2541 in her Writ because those cases are still in the lower judicial courts. If the defense was allowed such travesty of justice in CV84-2540, they could claim a Supreme Court victory without even a hearing or trial in any Court and the Sheriff of Acadia Parish's statement that everyone is treated differently would again be proven, not to mention the problem with the letter of complaint petitioner had carried to the Acadia Parish Sheriff on May 4, 1984, and signed for by one of the deputies, (the night before the false arrest) being strangely missing from their files with no investigations conducted. The State Court saw fit to give petitioner 60 days (or until Feb. 19, 1988) to amend her complaint against Dep. Bearb et al, in CV84-2540. Counsel for Deputy Bearb, who did not attend the hearing on exceptions on Dec. 21, 1987, withdrew his exceptions and filed an answer on Jan. 5, 1988.

Although there was finally a trial in CV84-2541, Benson vs. Lois F. Bearb and Leslie Faul, there were serious mistakes and that case is being appeal. The secret filings without copying petitioner in March of 1986, prior to their "victories" without any hearings affect not only two above cases, but the subject cases against Ally et al, because they misrepresented to the Court that petitioner's complaints were all in her mind in above cases which Ally cases derived from, and then filed secret distortions and serious misrepresentations without copying her or allowing her to rebut and be heard prior to summary judgment in the Dep. Bearb case, summary judgment in the Ally cases, and denial of her motion for injunction in CV84-2541, and all without any hearings. At the trial in CV84-2541 in July, counsel for the opposition did not put either of the defen-

dants on the stand at all, not even re serious misrepresentations re the destroying of the road (in their secret filings of March 1986) after petitioner had taken financial losses in view of their agreements which included full use of the road to her farm which was enclosed at that time. Petitioner had not had a chance to review the transcript before Christmas in view of other legal matters, and it is clear that Counsel for the defendants at trial again simply told the Court of their misrepresentations re the road (he did not take the stand) and carefully avoided putting the defendants on the stand so that they could not be cross-examined; thus the findings of the Court which the Court picked up from Counsel's secret filings of "fact and law" which he resubmitted in post trial brief is not evidence, not to mention the fact that petitioner was not allowed to go into and enter evidence as to some of these crucial issues. Petitioner also noted serious mistakes in the transcript of the trial. Mistakes were noted by some of her witnesses also after they had a chance to review their testimony, all of which seriously affects the issues. On Jan. 8, 1988, the Fifth Circuit "granted Petitioner an extension of time to file her brief, to and including 30 days after Court rules on motion to correct record." (However, on 1/12/88 the Judge denied motion to review tapes and make corrections! pg. 2a.) Petitioner is asking the Court to withhold their decision in this case, 87-884 (Ally cases) until after she has had a chance for due process in the cases which subject case derived from because the defense is using her Writ filed on Nov. 30 in Ally case on issues not even presented to deny due process again in CV84-2540, and should the High Court not grant her writ the harm would be compounded. Also as shown at No. 1, although all discovery was denied petitioner in subject cases, Dr. Ally's long distance false label as explained in her Writ, is being used to try to discredit her in other case, but the defendants in the Ally

case do not have to answer one question and the many years of secret abuses are sanctioned and the road is paved to continue and increase the abuses, as again shown below.

3. Petitioner has been informed recently that E.J. Faul, one of the defendants in the Ally cases (and owner of defendant Faul Energy in 1984) is planning to again sue her. See prior Writ. Although he is one of the defendants who the Fifth Circuit reversed against, should the High Court not grant Writ, E.J. Faul would have a carte blanc (as well as the others) to continue the abuses and would not even have to answer the interrogatories not protected by Court order and which makes a mockery of our system of justice and would destroy all hope in those of us who still want to believe in the Judicial system, and who have no other recourse. It would also create flawed and very distorted science which does nothing but harm for years to come. Petitioner, recently, in reading the transcript of the trial of CV84-2541, noted that she informed the Court re a misrepresentation, and counsel for the defendants told the Court that that was his misrepresentation. However, the record shows that the misrepresentation was made by E.J. Faul in his affidavit under oath. Should the Court deny petitioner's Writ, E.J. Faul and his counsel would have a field day in continuing to file frivolous motions against petitioner who suffers from a serious heart injury and E.J. Faul and others would not have to answer any interrogatories inspite of the reversal of the Fifth Circuit and the years of secret processes and abuses. Petitioner was told E.J. Faul is planning a third suit against her.

Petitioner has not received copies of any responses by opposing counsels, nor by any intervenors. While she realizes that it is not uncommon not to respond to a Writ, she has made known to opposing counsels that she has not

received any responses in view of the history of opposing counsels not having copied her, and misrepresentations made to the Court prior to rulings without copying her as explained in Writ. Thus, it would be tragic and detrimental to petitioner should she not be copied with an opportunity to respond prior to decision should there be any responses, and it would allow the many years of secret abuses to be sanctioned without due process and continue.

Petitioner is prepared to meet all rules, including the employing of an attorney to argue her case and prepare brief, should the Court so require if they decide to grant her Writ.

For the foregoing reasons, and for the reasons stated in the Petition for a Writ of Certiorari, the petitioner respectfully prays that her petition will be granted and that in any event the Court withhold their decision in subject case until after she has had a chance for due process in the cases which subject case derived from, to assure justice and prevent on-going harm.

The harm done by Dr. Ally's long distance label was obvious again from the recent reading of the transcript in CV84-2541 in the way petitioner was treated at trial. Their discrediting of her worked. Yet there are statutory Federal laws which protects pro se person. Title 28 U.S. Section 1654: *Childs vs. Duckworth* 705, F.2d 915, Ind. Ct. Ap. 1983 (prose must be given fair and meaningful consideration, and liberal construction to pleadings); *Traguth vs. Zuck,* 7109 F.2d 90 2nd Circ. 1983-right to self-representation, – Court to make reasonable allowances to protect pro se litigants.

In January 1988 a New York Court ruled in *Brown vs. New York,* that even a street person who had been in a mental hospital could reject treatments. This married peti-

tioner who lives in Virginia has hard facts from proper professionals showing she does not have the mental problems and does not need treatments after complete evaluations. See interrogatoris E.J. Faul and others refused to answer, including Alley.

Respectfully submitted,

By: Louella F. Benson, *pro se*
6432 Montrose Street
Alexandria, Va. 22312
703 256 7595

CERTIFICATE OF SERVICE

I certify that two copies of the foregoing has been mailed via first class mail on this 29 day of January 1988 to Charles Brandt, Esq. 300 B Stewart St., Lafayette, La. 70501, and to Homer Ed Barousse, Jr., Edwards, Stefanski, Barousse, Cunningham, Stefanski & Zaunbrecher, Edwards Building, P.O. Box 730, Crowley, La., 70526.

Louella F. Benson

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

LOUELLA F. BENSON	:	
	:	
VS.	:	CIVIL ACTION
	:	No. 85-1239
STATE OF LOUISIANA, ET AL	:	

ORDER

For written reasons rendered this date, IT IS ORDERED:

That the motion of defendants to require the psychiatric evaluation of plaintiff be and same is hereby denied;

IT IS FURTHER ORDERED that the motion of plaintiff to required the psychiatric evaluation of defendants is also denied.

THUS ORDERED at Lake Charles, Louisiana, this 2nd day of December, 1987.

/s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES MAGISTRATE

COPY SENT
DATE 12-22-87
BY /
TO: Benson Lorenz

U.S. DISTRICT COURT
WESTERN FISTRICT OF LOUISIANA
FILED
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By _____
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE–OPELOUSAS DIVISION

LOUELLA F. BENSON,
Plaintiff (Appellant) CV84-2541

vs.

LOIS F. BEARB,
LESLIE FAUL
Defendant (Appellees) JUDGE SHAW

ORDER

UPON CONSIDERATION OF Plaintiff's Motion to make corrections of the trial transcript ending Aug. 4, 1987 in the above mentioned case, it would appear that she has shown good cause and she is allowed to list the corrections after the tapes are made available for her to listen to. DENIED.

Ordered on this 12th day of January, 1988, Opelousas, La.

/s/ John M. Shaw
UNITED STATES DISTRICT JUDGE

COPY SENT
DATE 1-15-88
BY /
TO: Benson Brandt

U.S. DISTRICT COURT
WESTERN FISTRICT OF LOUISIANA
FILED
JAN 12 1988
ROBERT H. SHEMWELL, CLERK
By_____
DEPUTY